

SENATE BILL NO. 29

INTRODUCED BY V. COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TRANSFER OF \$50 MILLION FROM THE COAL SEVERANCE TAX TRUST FUND TO THE STATE GENERAL FUND FOR THE BIENNIUM ENDING JUNE 30, 2003; PROVIDING FOR REPAYMENT OF THE FUNDS TRANSFERRED FROM THE COAL SEVERANCE TAX TRUST FUND BY A 50-CENT INCREASE IN THE CIGARETTE SALES TAX; PROVIDING THAT THE INCREASE IN THE CIGARETTE SALES TAX GO TO THE STATE GENERAL FUND UPON REPAYMENT OF THE AMOUNT TRANSFERRED FROM THE COAL SEVERANCE TAX TRUST FUND; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ENTER INTO A CONTRACT WITH THE BOARD OF INVESTMENTS, ENSURING THE REPAYMENT OF THE TRANSFERRED \$50 MILLION; AMENDING SECTIONS 16-11-111 AND 16-11-119, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Transfer from coal severance tax trust fund. (1) There is transferred \$50 million, in increments or in a lump sum as ordered by the governor, from the coal severance tax trust fund to the state general fund to be used in the biennium ending June 30, 2003.

(2) Any money transferred pursuant to subsection (1) must be transferred prior to June 30, 2003, and must be repaid from the cigarette sales tax as provided in 16-11-119(4).

Section 2. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~48~~ 68 cents on each package containing 20 cigarettes and, when packages contain other than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a ~~credit or refund~~ refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

Section 3. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes. Cigarette taxes collected under the provisions of 16-11-111 must be allocated as follows:

(1) The amount of ~~44.44%~~ 2.94% of the cigarette tax collected on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes.

(2) The amount of ~~73.04%~~ 19.33% must, in accordance with the provisions of 15-1-501, be deposited

1 in the state general fund.

2 (3) The amount of ~~15.85%~~ 4.20% must, in accordance with the provisions of 15-1-501, be deposited
3 in the long-range building program account provided for in 17-7-205.

4 (4) The amount of 73.53% must be used to repay the money transferred from the coal severance tax
5 trust fund pursuant to the provisions of [section 1] and, upon repayment of that money, must, in accordance with
6 the provisions of 15-1-501, be deposited in the state general fund."

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8 NEW SECTION. Section 4. Contract. (1) The department of administration shall enter into a contract
9 with the board of investments, pledging the revenue derived from the cigarette sales tax provided in
10 16-11-119(4) to the repayment of the \$50 million transferred from the coal severance tax trust fund pursuant to
11 [section 1].

12 (2) The transfer of funds in [section 1] is not effective until the department of administration enters into
13 a contract with the board of investments implementing the repayment provisions provided for in 16-11-119(4)
14 and subsection (1) of this section.

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16 NEW SECTION. Section 5. Three-fourths vote required. Because [section 1] authorizes the transfer
17 of money from the coal severance tax trust fund to the general fund for appropriation, Article IX, section 5, of the
18 Montana constitution requires a vote of three-fourths of the members of each house of the legislature for
19 passage.

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21 NEW SECTION. Section 6. Notification to tribal governments. The secretary of state shall send a
22 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
23 band of Chippewa.

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25 NEW SECTION. Section 7. Effective date. [This act] is effective October 1, 2002.

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27 NEW SECTION. Section 8. Applicability. [This act] applies to cigarettes in the possession of
28 wholesalers on October 1, 2002.

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